Villa Sportswear, Inc. *and* Joint Board Cloak, Skirt and Dressmakers' Union, a/w International Ladies' Garment Workers' Union, AFL–CIO. Cases 1–CA–26545 and 1–CA–27967

May 12, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon charges filed by the Union, Joint Board Cloak, Skirt and Dressmakers' Union, a/w International Ladies' Garment Workers' Union, AFL–CIO, on July 24, 1989, and January 18, 1991, the General Counsel of the National Labor Relations Board issued a consolidated complaint on March 12, 1991, against Villa Sportswear, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act. Thereafter, on August 1 and September 4, 1991, respectively, the Respondent filed an answer and an amended answer to the complaint.

On March 20, 1992, the General Counsel filed a Motion for Summary Judgment. On March 24, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The consolidated complaint alleges that since on or about July 18, 1990, the Respondent has failed and refused to pay fringe benefit amounts which have become due to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan, under article XVIII of the 1988–1991 contract; that as of June 14, 1990, the Respondent was $129,148.62 in arrears in contractually required payments to these funds; that about June 14, 1990, the Respondent entered into an agreement with the Union providing that the Respondent would discharge the $129,148.62 in arrearages through 260 successive weekly payments; that since on or about August 3, 1990, the Respondent has failed to make the required weekly payments toward the discharge of the $129,148.62 in arrearages pursuant to its obligations in the agreement; that since about January 24, 1989, the Respondent has failed and refused to pay fringe benefit amounts that have become due to the funds under article XVIII of the 1988–1991 contract; and that by these acts and conduct the Respondent has failed to bargain in violation of Section 8(a)(5) and (1).

In its amended answer, the Respondent either admits or does not deny all of the foregoing allegations of the complaint, but states that "it should be credited for payments made throughout the period in question."

In agreement with the General Counsel, we find that the Respondent has admitted or failed to deny all the allegations of the complaint, and that the Respondent's bare statement that it "should be credited for payments made throughout the period in question" does not constitute an adequate defense to the allegations that it has violated Section 8(a)(5) and (1) of the Act by failing to make weekly payments towards the discharge of arrearages in fringe benefit fund payments as agreed, and by failing to pay fringe benefit amounts which have become due to the funds under the contract.[1] Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Boston, Massachusetts, has been engaged in the assembly, sewing, and finishing of garments for other manufacturers as a contractor in the garment industry. Annually, the Respondent performs services valued in excess of $50,000 for Significance, Inc., located in Norwood, Massachusetts, which sells and ships from its Norwood facility garments valued in excess of $50,000 directly to points located outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit*

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory production, maintenance, packing and shipping workers employed by

[1] We do not preclude the Respondent from raising at the compliance stage of this proceeding its assertion that it should be credited for payments already made to the funds in question.

Respondent at its Boston, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

For many years, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and the Union has been recognized as the bargaining representative by the Respondent. Recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period of June 15, 1988, to June 15, 1991.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. *The Violations*

Since on or about July 18, 1990, and continuing to date, the Respondent has failed and refused to pay fringe benefit amounts which have become due to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan, under article XVIII of the 1988–1991 contract.

As of June 14, 1990, the Respondent was $129,148.62 in arrears in contractually required payments to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan combined.

On or about June 14, 1990, the Respondent entered into an agreement with the Union providing that the Respondent would discharge the $129,148.62 in arrearages through 260 successive weekly payments as follows: $200 for the first through 104th weeks, with the first payment payable on July 6, 1990; $500 for the 105th through 259th weeks; and one final payment of $56,798.77.

Since on or about August 3, 1990, the Respondent has failed to make the required weekly payments toward the discharge of the $129,148.62 in arrearages pursuant to its obligations in the aforementioned agreement.

Since on or about January 24, 1989, the Respondent has failed and refused to pay fringe benefit amounts that have become due to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan, under article XVIII of the 1988–1991 contract.

By these acts and conduct, the Respondent has failed to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing, since on or about August 3, 1990, to make required weekly payments towards the discharge of the $129,148.62 in arrearages in contractually required payments to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan pursuant to its obligations in the June 14, 1990 agreement with the Union, and by failing, since on or about January 24, 1989, and July 18, 1990, to pay fringe benefit amounts that have become due to these funds under article XVIII of the 1988–1991 contract, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representatives of its employees, and has thereby been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make whole its unit employees by making the required payments towards the discharge of the $129,148.62 in arrearages in contractually required payments to the Health and Welfare Fund, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan pursuant to its obligations in the June 14, 1990 agreement with the Union, and to pay fringe benefit amounts which have become due to these funds under article XVIII of the 1988–1991 contract.[2] In addition, we shall order the Respondent to reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). Interest on any amounts due the unit employees shall be paid in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Villa Sportswear, Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[2] Any additional amounts owed with respect to the benefit funds will be determined in accordance with the procedure set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

(a) Failing and refusing to bargain in good faith with Joint Board Cloak, Skirt and Dressmakers' Union, a/w International Ladies' Garment Workers' Union, AFL–CIO, as the exclusive bargaining representative of the employees in the appropriate bargaining unit by failing and refusing to make the required payments towards the discharge of the $129,148.62 in arrearages in contractually required payments to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan pursuant to its obligations in the June 14, 1990 agreement with the Union, and by failing and refusing to pay fringe benefit amounts that have become due to these funds under article XVIII of the 1988–1991 contract. The appropriate unit is:

> All non-supervisory production, maintenance, packing and shipping workers employed by Respondent at its Boston, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole its unit employees by making required weekly payments towards the discharge of the $129,148.62 in arrearages in contractually required payments to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan pursuant to its obligations in the June 14, 1990 agreement with the Union, by paying fringe benefit amounts that have become due to these funds under article XVIII of the 1988–1991 contract, and by reimbursing the unit employees for any expenses ensuing from the Respondent's failure to make the payments.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of fringe benefit payments due under the terms of this Order.

(c) Post at its facility in Boston, Massachusetts, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Joint Board Cloak, Skirt and Dressmakers' Union, a/w International Ladies' Garment Workers' Union, AFL–CIO, as the representative of the employees in the appropriate unit by failing and refusing to make the required payments towards the discharge of the $129,148.62 in arrearages in contractually required payments to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan pursuant to its obligations in the June 14, 1990 agreement with the Union, and by failing and refusing to pay fringe benefit amounts that have become due to these funds under article XVIII of the 1988–1991 contract. The appropriate unit is:

> All non-supervisory production, maintenance, packing and shipping workers employed by Respondent at its Boston, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees by making required payments towards the discharge of the $129,148.62 in arrearages in contractually required payments to the Health and Welfare Fund of the Union, the ILGWU National Retirement

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Fund, and the ILGWU Health Services Plan pursuant to our obligations in the June 14, 1990 agreement with the Union, by paying fringe benefit amounts which have become due to these funds under article XVIII of the 1988–1991 contract, and by reimbursing our unit employees for any expenses ensuing from our failure to make the payments.

VILLA SPORTSWEAR, INC.